

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE: PROCESSED EGG PRODUCTS
ANTITRUST LITIGATION**

**MDL No. 2002
08-md-02002**

**THIS DOCUMENT APPLIES TO: ALL
INDIRECT PURCHASER ACTIONS**

**INDIRECT PURCHASER PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT BETWEEN PLAINTIFFS AND DEFENDANT
NATIONAL FOOD CORPORATION AND FOR CERTIFICATION
OF CLASS ACTION FOR PURPOSES OF THE SETTLEMENT**

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Indirect Purchaser Plaintiffs ("IP Plaintiffs") respectfully move the Court to: (1) preliminarily approve a settlement between IP Plaintiffs and National Food Corporation ("NFC") as set forth in the "Settlement Agreement between Indirect Purchaser Plaintiffs' Classes and National Food Corporation" ("NFC Settlement Agreement"), attached as Exhibit 1 to the Declaration of Paul F. Novak; (2) certify the proposed Settlement Classes for purposes of the NFC Settlement Agreement; and (3) appoint Class Counsel as co-lead counsel for the Settlement Classes.

This motion is based on the accompanying Memorandum of Law and the Declaration of Paul F. Novak submitted herewith, and is made on the following grounds:

1. The Settlement falls within the range of reasonableness and is sufficiently fair, reasonable and adequate to justify notice to those affected and an opportunity to be heard, the applicable standards for preliminary approval of a class action settlement. *See, e.g., In re Imprelis Herbicide Mktg., Sales Practices & Prods. Liab. Litig.*, No. 22-md-2284, 2013 U.S.

Dist. LEXIS 18332, at *7 (E.D. Pa. Feb. 11, 2013); *In re Auto. Refinishing Paint Antitrust Litig.*, MDL No. 1426, 2004 U.S. Dist. LEXIS 29163, at *3-6 (E.D. Pa. May 10, 2004) (citation omitted).

2. The NFC Settlement Agreement will provide the proposed classes with injunctive relief that prohibits NFC from engaging in certain output restrictive and jointly coordinated conduct, provides cash consideration of \$300,000, and requires NFC to cooperate with IP Plaintiffs in the continued litigation of the case, as described in the NFC Settlement Agreement and accompanying memorandum. Interim Co-Lead Counsel believe that this will greatly assist them in further analyzing and prosecuting the claims in this Action. *See e.g., In re Ikon Office Supplies Solutions v. Stuart*, 194 F.R.D. 166, 173 (E.D. Pa. 2000).

3. The Settlement is fair to the Classes as a whole, treats Class Representatives the same as other Class Members, and requires Interim Co-Lead Counsel to seek Court approval of an award for attorneys' fees and expenses from the Settlement Amount.

4. The Settlement is the result of extensive arm's-length negotiations by experienced antitrust and class action lawyers. *See In re Auto. Refinishing Paint Antitrust Litig.*, 2004 U.S. Dist. LEXIS 29163, at *6; *In re Imprelis*, 2013 U.S. Dist. LEXIS 18332, at *7-9.

5. The NFC Settlement Agreement was negotiated and executed after fact discovery was significantly advanced.

6. The expense and uncertainty of continued litigation against NFC, and the likelihood of appeals, militates strongly in favor of approval. *See In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 639 (E.D. Pa. 2003); *In re Remeron End-Payor Antitrust Litig.*, No. 02-2007, 2005 WL 2230314, at *17 (D.N.J. Sept. 13, 2005).

7. The Classes, as defined in the NFC Settlement Agreement, meet the requirements of Fed. R. Civ. P. 23(a), 23(b)(2) and (b)(3).

DATED: September 15, 2014

Respectfully submitted,

/s/ Paul F. Novak

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